

NOTICES OF PROPOSED SUMMARY RULEMAKING

The Administrative Procedure Act allows an agency to use the summary rulemaking procedure instead of the regular rulemaking procedure for repeals of rules made obsolete by repeal or supersession of an agency's statutory authority or the adoption, amendment, and repeal of rules that repeat verbatim existing statutory authority granted to the agency. An agency initiating summary rulemaking shall file the proposed summary rule with the Governor's Regulatory Review Council and the Secretary of State for publication in the next available issue of the *Register*. The proposed summary rule takes interim effect on the date of publication in the *Register*.

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TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES HEALTH CARE INSTITUTIONS: LICENSURE

PREAMBLE

1. Sections Affected

R9-10-1011
R9-10-1012
R9-10-1013
R9-10-1014
R9-10-1015
R9-10-1016
R9-10-1017
R9-10-1018
R9-10-1019
R9-10-1020
R9-10-1021
R9-10-1022
R9-10-1023
R9-10-1024
R9-10-1025
R9-10-1026
R9-10-1027
R9-10-1028
R9-10-1029
R9-10-1030

Rulemaking Action

Repeal
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2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-136(F)
Implementing statutes: A.R.S. §§ 36-405, 36-502, and 36-2023

3. The interim effective date of the summary rules:

July 21, 1995
Close of record: August 21, 1995

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Arlene Good Thunder
Address: Department of Health Services
Assurance & Licensure Services
1647 East Morten, Suite 230
Phoenix, Arizona 85020
Telephone: (602) 255-1272
Fax: (602) 255-1126

5. An explanation of the rule, including the agency's reasons for initiating the rule:

These rules had set forth the minimum standards and requirements for the licensure of behavioral health service agencies but are now redundant and obsolete. Pursuant to Laws 1992, Ch. 301, § 61, and under an exemption from the provisions of A.R.S. Title 41, Chapter 6, the Department adopted new rules in Title 9, Chapter 20, Behavioral Health Service Agencies: Licensure, which govern the licensure of behavioral health service agencies. The adoption of Chapter 20 was intended to replace Chapter 10, Article 10, in its entirety; however, a repeal of Chapter 10, Article 10, was not possible under the Department's limited exemption to A.R.S. Title 41, Chapter 6. Therefore, pursuant to A.R.S. § 41-1027, the Department is repealing these rules because they are no longer used.

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6. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
7. The preliminary summary of the economic, small business, and consumer impact:
Pursuant to A.R.S. § 41-1055(D)(2), the agency is exempt from preparing the economic, small business, and consumer impact statement summary.
8. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:
Not applicable.
9. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule:
None scheduled.
10. An explanation of why summary proceedings are justified:
Since this action is only to repeal obsolete rules and no proceedings are scheduled, no justification is necessary.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
None.
12. Incorporations by reference and their location in the rules:
None.
13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSURE**

**ARTICLE 10. BEHAVIORAL HEALTH SERVICE
AGENCIES**

- R9-10-1011. General
- R9-10-1012. Definitions
- R9-10-1013. Applicability and scope of regulations
- R9-10-1014. Licensure process and requirements
- R9-10-1015. General organization and administration
- R9-10-1016. Client records
- R9-10-1017. Confidentiality of client records
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- R9-10-1021. Environmental and general building requirements
- R9-10-1022. Food service
- R9-10-1023. Required elements of agency's program of services
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- R9-10-1027. Mental health treatment services
- R9-10-1028. Partial care services
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- R9-10-1030. Detoxification services

**ARTICLE 10. BEHAVIORAL HEALTH SERVICE
AGENCIES**

R9-10-101. General

All behavioral health service agencies are subject to inspection by the Department as provided in A.R.S. §§ 36-406, 36-424, 36-502(A) and 36-2023(A). The agencies shall afford Department personnel and other authorized officials every opportunity to examine records, inspect the entire premises, and obtain all information required in the administration of A.R.S. Title 36, Ch. 4, Articles 1 and 2, Ch. 5 and Ch. 18. Department personnel will maintain verbal and written confidentiality concerning these records, as required by A.R.S. § 36-404.

R9-10-1012. Definitions

A. "Behavioral health services" means screening, evaluation, care or treatment services to prevent, reduce, or eliminate substance abuse, disorders related to one or more mental

disorders, personality disorders or emotional conditions. Behavioral health services includes the following:

1. "Behavioral health emergency services" means intensive, immediate, short-term services that inform, evaluate and treat persons in a crisis situation related to mental disorders, personality disorders, emotional conditions or the abuse or misuse of alcohol or other drugs.
2. "Behavioral health residential services" means a non-hospital, live-in program consisting of a therapeutic regimen of screening, evaluation, treatment or rehabilitation provided on a 24-hour basis in a supervised environment to persons suffering from mental disorders, personality disorders, emotional conditions or the effects of substance abuse.
3. "Court ordered alcoholism treatment services" means involuntary residential services in an alcoholism treatment facility for clients designated as chronic alcoholics pursuant to A.R.S. Title 37, Ch. 18.
4. "Detoxification services" means a treatment program designed to provide for the systematic reduction of physical dependence upon alcohol, drugs or other substances by use of therapeutic procedures, e.g. medication, rest, diet, counseling, or medical supervision.
5. "Mental health evaluation service" means assessment of a person's medical, psychiatric, psychological or social condition provided pursuant to A.R.S. Title 36, Ch. 5.
6. "Mental health screening services" means the preliminary interviewing and assessment of a person to determine if the person has a mental disorder and if the person is a danger to himself or others or is gravely disabled as defined by A.R.S. Title 36, Ch. 5.
7. "Mental health treatment services" means treatment services provided pursuant to A.R.S. Title 36, Ch. 5.
8. "Partial care services" means a planned program consisting of part-day, evening, night, or weekend treatment provided through sessions of at least three hours per day for persons with mental disorders, personality disorders, emotional conditions or substance abuse problems who

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require less than intensive 24-hour services but more than outpatient visits.

9. "Substance abuse treatment services" means screening, evaluation, treatment, or rehabilitation services provided to persons with substance abuse problems.
- B. "Behavioral health service agency" as defined in R9-10-113(B)(4) means a class of health care institution other than a hospital which provides screening, evaluation, care or treatment to persons having mental disorders, personality disorders, emotional conditions or substance abuse problems.
- C. "Client" means an individual who is receiving services from a behavioral health service agency. Clients may be termed patients, residents or wards.
- D. "Intake, screening and referral process" means the preliminary assessment of the needs of prospective clients and the referral of such clients to the appropriate resource for treatment or care.
- E. "License" means a certificate issued by the Department to indicate that an agency is authorized by the Department to provide behavioral health services and which has been found to be in compliance with these regulations and laws at the time of issuance thereof.
- F. "Medication" means any drug or medicine which may be dispensed or administered by prescription in accordance with state or federal law.
- G. "Referral" means assistance to a person and/or his family to locate and make use of medical, legal, psychological, social, educational, vocational, and other services needed for the reduction or management of mental disorders, personality disorders, emotional conditions or substance abuse problems.
- H. "Substance abuse" includes chronic, habitual, or compulsive use of any chemical matter, which, when introduced into the body in any way is capable of causing altered human behavior or altered mental functioning, and which, if used over an extended period of time, may cause psychological or physiological dependence or impaired mental, social, or economic functioning.
- I. "Treatment" means the range of care received by a client which is consistent with the agency's program statement, evaluation of the client's medical, psychiatric, psychological or substance abuse problem(s), and determination by the therapist, of the client's treatment needs based on that evaluation.

R9-10-1013. Applicability and scope of regulations

- A. The rules in this Article apply to the licensure of any public or private behavioral health service agency, corporation, or other organization, proprietary or non proprietary, which provides one or more behavioral health service.
- B. Hospitals licensed pursuant to Ch. 10, which provide one or more behavioral health service, are, in addition to other applicable articles of this Chapter, subject to the following regulations: R9-10-1012 through R9-10-1014, R9-10-1016 through R9-10-1018, R9-10-1023 through R9-10-1030. Unless otherwise expressly provided, the requirements of this Article, when applied to a hospital, apply only to the behavioral health services of the hospital.
- C. These rules do not apply to:
1. Behavioral health service agencies which provide only administrative services and do not provide direct patient treatment.
 2. Educational services or activities offered under the auspices of an educational institution accredited by a nationally recognized organization.

3. Crisis intervention programs which do not provide face-to-face, on-site services.
4. Self help or self growth groups.
5. Private practitioners defined pursuant to A.R.S. 36-402 and other private practitioners who do not keep clients overnight, are not responsible to a lay board, and who do not employ or contract with others to deliver behavioral health services.
6. Agencies licensed by the Department of Economic Security, pursuant to A.R.S. §§ 8-503 and 36-558.0

R9-10-1014. Licensure process and requirements

- A. An application for a behavioral health service agency license shall indicate which of the following types of behavioral health services the applicant plans to provide:
1. Behavioral health emergency services.
 2. Mental health screening services.
 3. Mental health evaluation services.
 4. Mental health treatment services.
 5. Substance abuse treatment services.
 6. Detoxification services.
 7. Behavioral health residential services.
 8. Partial care services.
 9. Court ordered alcoholism treatment services.
- B. Upon being satisfied that the agency complies with all appropriate provisions of this Chapter, the Department shall issue to the agency a license to operate as a behavioral health service agency. The license shall specify the services the agency is authorized to provide and the location at which the services are based.
- C. A hospital which provides one or more behavioral health services shall, upon application for a license pursuant to Ch. 10, identify those behavioral health services that it provides as set forth in subsection (A) of this rule. The Department shall, as part of its licensure survey pursuant to Ch. 10, determine whether the hospital complies with the applicable provisions of this Chapter. The license issued to the hospital shall specify the behavioral health services the hospital is authorized to provide.

R9-10-1015. General organization and administration

- A. Governing authority
1. The agency shall adopt a written program statement of activities.
 2. Each behavioral health agency shall be organized and administered under one authority which may be a proprietorship, partnership, association, corporation or governmental unit.
 3. The agency shall appoint a qualified administrator who will be responsible for carrying out the policies determined by the governmental unit or governing board.
- B. Administration
1. The administrator shall be in charge of the management and business affairs of the institution and shall be fully authorized and empowered to carry out the provisions of this Ch. 10, Article 10 and shall be charged with the responsibility of doing so.
 2. The administrator shall not leave the premises without delegating necessary authority to a competent person who will be on the premises during his absence.
 3. The administrator shall be responsible for the completion, keeping or submission of such reports and records as may be required by the Department.
- C. Clinical or program director
1. There shall be a clinical or program director who must be appropriately qualified for the management of client services of the agency.

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2. The clinical or program director shall be responsible for the overall clinical operation of the agency.
3. The clinical or program director shall designate in writing a qualified individual to act for him in his absence to provide the agency with clinical direction at all times.

D. Personnel

1. The agency shall establish written policies describing the duties, responsibilities, and required minimum qualifications of its personnel. Such qualifications shall be consistent with statutory, professional, or occupational licensure, certification or registration requirements.
2. There shall be a sufficient number of appropriately qualified staff and supporting personnel to provide the quantity and types of services set forth in the agency's written program statement. The agency shall maintain personnel records which include job descriptions and personnel qualifications and shall be available to authorized representatives of the Department.

E. Client fees and charges

1. The agency shall, at the time of admission, provide each client or his parent or guardian with a schedule of client fees which the applicant may incur during that admission. If the schedule of fees and charges contains a provision for reduced charges based on ability to pay, criteria for determining the applicant's ability to pay must be clearly stated.
2. If a new schedule of fees or new payment criteria will become effective during the course of a client's treatment, the new fee schedule and related payment criteria shall be made known to the client 30 days before the change becomes effective.

R9-10-1016. Client records

- A. There shall be written policies and procedures governing the compilation, storage, confidentiality, and dissemination of individual client records and client identifying information.
- B. Individual records for each client shall be maintained. These records shall be kept up to date and complete on each client in the program. After the death or discharge of the client, the record shall be placed in an inactive file and kept in the facility at all times and available to the staff. For licensing purposes, medical records shall be readily retrievable for a period of not less than three years, except that A.R.S. 36-343 requires retention of vital records and statistics for ten years. When services are provided to a family as a group a single record may be maintained for the family, providing that each individual is readily identifiable and all other client record requirements are met.
- C. All client records shall be considered confidential, except that they shall be made available to the authorized Department personnel.
- D. Each client record kept from the time of admission to the time of discharge or death shall include the following information:
 1. Identifying information.
 2. Dates of admission and discharge.
 3. Description of current symptoms.
 4. Records of medical care and medications provided by the agency.
 5. An individualized treatment plan which is updated periodically.
 6. Written progress reports for clients.
 7. Treatment consent forms, if applicable.
 8. Information release forms, if applicable.
 9. Discharge summary.

R9-10-1017. Confidentiality of client records

All information and records obtained in the course of screening, evaluation, and treatment of mental health clients shall be kept confidential and not as public records, except for disclosures authorized by A.R.S. § 36-509. All client records shall be maintained in a secure and confidential manner, protecting the client against loss, tampering, or unauthorized disclosure of information, consistent with applicable federal and state law. An agency providing substance abuse services shall comply with the alcohol and drug abuse patient record requirements of 42 C.F.R. 2.1 *et seq.*, as amended.

R9-10-1018. Client rights

- A. An agency providing services to persons with mental or emotional problems shall comply with the client rights provisions of A.R.S. §§ 36-504(A) and R9-15-10.
- B. An agency providing substance abuse services shall have a written plan or statement that describes the rights of clients and the means by which those rights are protected and exercised. The following rights shall be included:
 1. Each client shall have impartial access to treatment, regardless of race, religion, sex, age, or handicap.
 2. Each client shall receive individualized treatment, which shall include at least the following:
 - a. The provision of services within the least restrictive environment possible.
 - b. The client shall be made aware of the content of the client's treatment plan. The plan shall be reviewed and updated as often as is clinically indicated.
 - c. The active participation of parents, relatives, or guardians in planning of treatment for unemancipated children, unless such participation is clinically contraindicated.
 3. Unless clinically contraindicated, each client who receives 24 hour care:
 - a. May have visitors.
 - b. Shall be allowed to visit in private.
 - c. Shall be allowed to send and receive mail without hindrance.
 - d. Shall be allowed to conduct private telephone conversations. If it is necessary, for clinical reasons, to restrict visits, visitors, telephone calls, mail, or other communications, those restrictions shall be evaluated for therapeutic effectiveness by the clinically responsible staff at least every seven days, be determined with the participation of the patient and the patient's family, unless such participation is clinically contraindicated, and be fully explained to the patient and the patient's family.
 4. Each client shall receive a copy of the written statement of client's rights in English or Spanish, as appropriate. A copy of the statement shall also be posted at one or more locations commonly used by clients in the agency. Additionally, these rights shall be explained to the client in a language the client understands.

R9-10-1019. Research

- A. The written informed consent of each client participating in any research project shall be obtained prior to participation.
- B. When an agency engages in research activities or allows its personnel, clients, records or facilities to be used for research purposes, there shall be written policies and procedures for carrying out such research activities, which include, but need not be limited to:
 1. Guidelines for ensuring the rights of all human subjects and provisions for protection of client anonymity both

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during the research and following publication of the results.

2. Specification that where bodily integrity may be violated (e.g., use of electroconvulsive therapy, chemotherapy), there be supervision by a physician.

R9-10-1020. Medication control

- A. Medication administered under the direction of a person authorized to prescribe medications, and whose visits are documented.
- B. The agency shall assist clients to obtain needed pharmaceutical services.
- C. There shall be written policies and procedures to ensure that all medications are dispensed and administered in accordance with applicable federal, state, and local laws and regulations.
- D. Medication orders shall be written only by persons authorized by law to do so. Verbal or telephone orders shall be limited to urgent circumstances and shall be signed by the authorizing person on the next regular working day (not to exceed 72 hours).
- E. Medication shall be administered only by a person authorized by law to do so.
- F. Medication records shall allow for the monitoring of all medications administered and the detection of adverse drug reactions and shall identify at least the name of the medication, dose, route of administration, frequency of administration, and name of the person who prescribed the medication.
- G. There shall be documented inspections of all drug storage areas and medication centers conducted on at least a quarterly basis to assure that these areas are maintained in compliance with federal, state, and local regulations. There shall be verification that a minimum:
 1. Drugs requiring special conditions for storage to ensure stability are properly stored.
 2. No outdated drugs are stored.
 3. All drugs are kept in locked storage.
 4. Poisons, external drugs, and internal drugs are stored on separate shelves, or in separate cabinets.
 5. Medications that are stored in a refrigerator containing items other than drugs are kept in a separate compartment or container with proper security.
 6. Drugs are disposed of in accordance with state and federal requirements.
- H. The administration of all psychotropic medication for clients receiving mental health services pursuant to A.R.S. Title 36, Ch. 5 shall be in accordance with A.R.S. §§ 36-513 and R9-15-101 *et seq.*

R9-10-102. Environmental and general building requirements

- A. The physical plant of a behavioral health service agency shall:
 1. Be clean, sanitary, and in good repair. Effective insect, vermin and rodent control must be exercised at all times.
 2. Have all equipment and furnishings, clean and in good repair, to adequately provide the services set forth in the agency's program statement.
 3. Be free of undesirable odors.
 4. Be equipped with basic emergency first aid equipment and supplies which may reasonably be expected to be needed to deal with medical emergencies which may arise.
 5. Have a written plan of evacuation, in case of fire or other disaster, which shall be conspicuously posted throughout the facility.

6. Have adequate lighting and ventilation.
 7. Have heating and cooling which meets state and local building codes. Cooling systems shall be of adequate capacity and in good working condition. The use of unvented or open flame space heaters is prohibited.
 8. Maintain current written inspection records or approvals from all local jurisdictions in readily accessible files for inspection by the Department. Written reports of improvements made as a result of such inspections shall also be maintained in accessible files.
 9. Have space for client interviews, medical examinations (if medical examinations are given), individual counseling, and other therapeutic activities. Such rooms shall be constructed and arranged so as to provide clients auditory and visual privacy.
 10. Have space for use as waiting rooms for clients and their visitors.
 11. Have an adequate number of toilets and lavatories to serve the agency's clients, staff and visitors during peak service hours. All bathrooms shall be of easily cleanable construction and provide privacy unless contraindicated by treatment policies and procedures included in the agency's program statement.
- B. Each behavioral health services agency providing 24 hour care shall meet these additional requirements:
1. There shall be space for private interviewing, evaluating or examining clients, and for discussion between staff and families of clients or between clients and visitors.
 2. Space shall be available to all residents for relaxation and leisure time activities.
 3. A separate dining area shall be available that shall not be used as a sleeping room by residents or staff.
 4. Sleeping rooms shall be of sufficient size to permit:
 - a. Unimpeded access to exit doors and passageways from all client occupied parts of the room;
 - b. Unobstructed opening of storage drawers, closets and exit doors.
 5. Multibed sleeping rooms shall have a minimum of three feet between beds unless the agency obtains the written permission of either the state or local fire marshal's office to provide less distance between beds.
 6. No sleeping room shall be used as a passageway to another room, bath, or toilet, unless that room, bath or toilet is for the exclusive use of those occupying the sleeping room.
 7. Furnishings in each sleeping room shall include as a minimum:
 - a. A bed equipped with a clean mattress and at least one pillow for each client. Beds acquired after the date of the adoption of these rules shall be at least 32 inches wide. Cribs are acceptable for persons under the age of three.
 - b. Firmly attached side rails on all upper bunk beds. No more than one bed may be located over another in a bunk bed arrangement.
 - c. A supply of clean sheets, blankets and pillow cases sufficient to allow changing of bed linen as often as necessary to keep beds clean, dry and free of odors. At least two clean sheets, one blanket and a pillow case shall be furnished to each client each week. Clean mattress pads or covers will also be provided.
 8. Ample closet and drawer space shall be available for storage of clothing and personal belongings of the client.

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9. Bathroom facilities which shall include at least one tub or shower, one toilet and one lavatory for each ten residents. Hot and cold running water shall be provided for all tubs, showers and lavatories.
10. Laundry facilities shall be available for the washing, ironing and mending of clients' personal clothing.

R9-10-1022. Food service

Agencies which provide 24 hour care must provide or enable clients to make a minimum of three meals daily at reasonable times. The agency shall make available to clients who work or who are away from the agency regularly a minimum of two meals daily, as individual client needs dictate.

1. Meals shall include the recommended amounts of the basic food groups (grains, protein, fruit, vegetables and dairy products).
2. The facility must be capable of providing and monitoring modified diets to those residents who require them.
3. Food preparation, storage and handling shall be performed in compliance with Ch. 8, Article 1.

R9-10-1023. Required elements of agency's program of services

Each agency shall include, at a minimum, the following elements in its program of services:

1. There shall be written admission criteria with sufficient detail to allow prospective clients and referring agencies to understand admission policies.
 - a. It shall be the responsibility of the administrator to accept for admission only those applicants whose needs do not exceed the specialty of range of services for which the agency is licensed.
 - b. Any unique admission provisions relating to the admission of clients who are involuntarily referred for treatment or evaluation under court order must be stated in detail, accompanied by a description of all special care, treatment, and discharge restrictions which may attend the client's involuntary status.
2. There shall be an identifiable and uniform intake, screening and referral process, designed to evaluate client problems and provide the basis for initial treatment plans. This process shall be conducted by qualified behavioral health personnel. Admission evaluations must include, at minimum, the following elements:
 - a. An interview of the applicant and a review of available information regarding the applicant to obtain a personal history of the applicant's presenting problems, medical, social, economic, and family background, his education and vocational achievements, history of previous behavioral, mental health, or substance abuse treatment.
 - b. All physical and laboratory examinations found to be necessary.
 - i. Those found to be necessary shall be recommended to the client and if such examinations are not conducted on-site, the client shall be referred to a specific and appropriate facility for examination.
 - ii. Case records shall show that these recommendations or referrals have been made.
 - c. In an agency providing 24-hour care, an assessment of each client's medical status and needs conducted within 72 hours of the client's admission.

3. There shall be written treatment discharge criteria, with sufficient detail to allow a client reaching the stage of possible discharge to understand expected performance in relation to the individual treatment goals, and to assure clients who are involuntarily terminated that the termination decision was neither arbitrary nor capricious. Discharge criteria shall include provisions that the client be advised of the reason for termination, and the opportunities, if any, available to him to gain readmission, and that no client shall be involuntarily terminated while physically dependent upon any addicting medication prescribed as part of the client's treatment by the agency unless the client is offered an opportunity to detoxify from the substance prior to discharge. This provision does not apply when a client is a danger to program staff or voluntarily leaves a program without giving prior notice.
4. There shall be a grievance procedure to provide for review and adjustment of client complaints, refusal of admission, and termination of services against a client's wishes.
5. There shall be counseling services that utilize the individual, family, or group counseling techniques which best meet the needs of the client.
6. There shall be a system for periodic client record, utilization, and client management review to encourage discharge of clients at the earliest time that is clinically advisable.

R9-10-1024. Behavioral health emergency services

A behavioral health service agency which provides emergency behavioral health services shall comply with this rule in addition to the requirements of R9-10-1011 through R9-10-1023. A hospital licensed pursuant to Ch. 10 which provides emergency behavioral health services shall comply with this rule in addition to the requirements of R9-10-1012 through R9-10-1014, R9-10-1016 through R9-10-1018, and R9-10-1023. A provider of behavioral health emergency services shall:

1. Be capable of providing medical first aid and dealing with acute emotional and behavioral distress.
2. Make telephone information and referral directly available during all hours of operation.
3. Have procedures that assure the prompt evaluation of both the physical and psychological status of individuals so that a rapid determination can be made of the nature and urgency of the problem and of the type of treatment required.
4. Keep a record of each person receiving emergency service which identifies the presenting problem, treatment given, and disposition of the case. The emergency record shall be reviewed for accuracy and signed by the staff person in charge.
5. Assure that all staff members providing emergency services have had training or demonstrated experience in the basic methods of dealing with the physical and psychological complications of acute emotional, alcohol or other drug abuse conditions.

R9-10-1025. Mental health screening services

A behavioral health agency which provides mental health screening services shall comply with this rule in addition to the requirements of R9-10-1011 through R9-10-1023. A hospital licensed pursuant to Ch. 10 which provides mental health screening services shall comply with this rule in addition to the requirements of R9-10-1012 through R9-10-1014, R9-10-1016 through R9-10-1018, and R9-10-1023. A provider of mental health screening services shall:

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1. Have written policies and procedures governing the screening of prospective clients to ensure that the screening process is accomplished within two business days of admission, except when the admission occurs immediately prior to a week-end or holiday, in which case it shall be accomplished within two normal business days.
2. Provide the necessary forms and technical assistance to assist any responsible person to initiate an application for court-ordered evaluation of a mentally-disordered person.
3. Have a medical director who shall be responsible for determining whether an application for court-ordered evaluation is supported by reasonable cause and whether a petition for evaluation should be filed with the court pursuant to A.R.S. Title 36, Ch. 5.
4. Be staffed by qualified personnel who are capable of knowledgeably screening persons who are gravely disabled, or who are alleged to be mentally-disordered and a danger to themselves or others.

R9-10-1026. Mental health evaluation services

A behavioral health service agency which provides mental health evaluation services shall comply with this rule in addition to the requirements of R9-10-1011 through R9-10-1023. A hospital licensed pursuant to Ch. 10 which provides mental health screening services shall comply with this rule in addition to the requirements of R9-10-1012 through R9-10-1014, R9-10-1016 through R9-10-1018, and R9-10-1023. A provider of mental health evaluation services shall:

1. Have written policies and procedures governing the conduct of evaluation which are designed to ensure that each client, or prospective client, receives a complete evaluation of his physical, psychological or psychiatric treatment needs.
2. Have a medical director who shall be responsible for determining whether there is a need pursuant to A.R.S. Title 36, Ch. 5 for court-ordered treatment. The medical director shall be responsible for filing a petition for treatment with the court in the event it is determined that there is a need for treatment.
3. Designate an area for the safe treatment of dangerous patients, if it evaluates dangerous patients.
4. Provide for the privacy of patients undergoing evaluation procedures and subsequent interviews or consultations as defined in A.R.S. § 36-507.
5. Have a record-keeping system that will enable the Department to determine whether the agency is complying with the requirements of this Article and that each patient's case is processed in a complete and timely fashion.

R9-10-1027. Mental health treatment services

A behavioral health service agency which provides mental health treatment services shall comply with this rule in addition to the requirements of R9-10-1011 through R9-10-1023. A hospital licensed pursuant to Ch. 10 which provides mental health treatment services shall comply with this rule in addition to the requirements of R9-10-1012 through R9-10-1014, R9-10-1016 through R9-10-1018, and R9-10-1023. A provider of mental health treatment services shall:

1. If it provides court ordered treatment pursuant to A.R.S. Title 36, Ch. 5, accepts clients for hospitalization on either a voluntary or involuntary basis, or admits minors under the age of 14 pursuant to A.R.S. § 36-518, have a medical director who shall be responsible for supervising and administering treatment plans.
2. Be staffed by a sufficient number of professional and other personnel to carry out their respective functions as prescribed in A.R.S. Title 36, Ch. 5.

3. Designate an area for the safe treatment of dangerous patients, if an agency provides treatment for dangerous patients.
4. Provide for the privacy of patients undergoing admission procedures and subsequent interviews or consultations as defined in A.R.S. § 36-507.
5. Have a record-keeping system that will enable the Department to determine whether the agency is complying with the requirements of this Article and that each patient's case is processed in a complete and timely fashion.

R9-10-1028. Partial care services

A behavioral health service agency which provides partial care services shall comply with this rule in addition to the requirements of R9-10-1011 through R9-10-1023. A hospital licensed pursuant to Ch. 10 which provides partial care services shall comply with this rule in addition to the requirements of R9-10-1012 through R9-10-1014, R9-10-1016 through R9-10-1018, and R9-10-1023. A provider of partial care services shall:

1. Include a therapeutic regimen of regularly scheduled counseling sessions and other supervised activities such as recreational activities, life skills training, re-socialization and rehabilitation.
2. Include drug-free or alcohol-free alternatives to provide the client creative activities in a substance-free setting.

R9-10-1029. Behavioral health residential services

A. A behavioral health service agency which provides behavioral health residential services shall comply with this rule in addition to the requirements of R9-10-1012 through R9-10-1023. A hospital licensed pursuant to Ch. 10 which provides behavioral health residential services shall comply with this rule in addition to the requirements of R9-10-1011 through R9-10-1014, R9-10-1016 through R9-10-1018, and R9-10-1023. A provider of partial care services shall:

1. Have a treatment program which includes at a minimum the following on-site services:
 - a. Preparation for independent living in the community.
 - b. Counseling.
 - c. Dietary supervision and consultation.
 - d. Improvement and/or maintenance of physical and emotional health and personal and social development.
2. Have written procedures for responding to any client medical problems or emergencies.
3. Have at least one staff member on-site at all times.
4. Have policies and procedures for handling medical emergencies and death.

B. A hospital or behavioral health service agency providing court-ordered alcoholism treatment pursuant to A.R.S. 36-2026.01 shall:

1. Have a method to retain clients in the facility.
2. Have written policies and procedures to handle hostile or violent clients.
3. Have staff members who are skilled in counseling resistive clients and those who have not benefited from prior treatment episodes.
4. Have a program for involuntary committed clients.

R9-10-1030. Detoxification services

A behavioral health service agency which provides detoxification services shall comply with this rule in addition to the requirements of R9-10-1012 through R9-10-1023. A hospital licensed pursuant to Ch. 10 which provides detoxification services shall comply with this rule in addition to the requirements of R9-10-1011 through

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R9-10-1014, R9-10-1016 through R9-10-1018, and R9-10-1023.
A provider of detoxification services shall:

1. ~~Be capable of effectively managing the physiological manifestations and distress associated with withdrawal. Where a program is limited in the types of withdrawal it is able to facilitate, the agency shall make known in its publicity which types of withdrawal are available through the program.~~
2. ~~Have written policies and procedures governing detoxification, withdrawal and overdose management which shall be in accordance with the applicable provisions of A.R.S. Title 36, Ch. 18, Article 1.~~
3. ~~Be staffed with sufficient numbers of behavioral health personnel to provide close observation of all clients with regular monitoring of vital signs. All staff members providing detoxification services shall have had training or demonstrated experience in the basic methods of~~

~~dealing with the physical and psychological complications of acute emotional, alcohol or other drug abuse states, as appropriate. A physician shall be available on site or on call at all times, and the availability of the physician shall be documented. Current toxicology references and antidotal information shall be readily available, along with the telephone numbers of ambulance services and other resources to provide transportation and emergency treatment, assistance, and advice.~~

4. ~~Not begin medical detoxification without a written order from a physician defining the medical regimen to be followed.~~
5. ~~Have written policies and procedures for handling medical emergencies and death.~~
6. ~~Assess each client's medical status and needs upon the client's admission.~~

NOTICES OF ADOPTED SUMMARY RULEMAKING

The Administrative Procedure Act allows an agency to use the summary rulemaking procedure instead of the regular rulemaking procedure for repeals of rules made obsolete by repeal or supersession of an agency's statutory authority or the adoption, amendment, and repeal of rules that repeat verbatim existing statutory authority granted to the agency. An agency initiating summary rulemaking shall file the proposed summary rule with the Governor's Regulatory Review Council and the Secretary of State for publication in the next available issue of the *Register*. The proposed summary rule takes interim effect on the date of publication in the *Register*. After an agency has gone through the summary rulemaking process, the agency shall submit a Notice of Adopted Summary Rulemaking to the Secretary of State for publication in the next available issue of the *Register*. The adopted summary rule will then become permanently effective from the interim effective date of the proposed summary rulemaking.

NOTICE OF ADOPTED SUMMARY RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 9. DEPARTMENT OF HEALTH SERVICES HEALTH CARE INSTITUTIONS: ESTABLISHMENT; MODIFICATION

PREAMBLE

- | | |
|---|---|
| <p>1. <u>Sections Affected</u></p> <p>R9-9-225.
R9-9-226.
R9-9-227.
R9-9-228.
R9-9-229.
R9-9-230.
R9-9-231.
R9-9-232.
R9-9-233.
R9-9-234.
R9-9-235.
R9-9-236.
R9-9-237.
R9-9-238.
R9-9-239.
R9-9-240.
R9-9-241.
R9-9-242.
R9-9-243.</p> | <p><u>Rulemaking Action</u></p> <p>Repeal
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2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. § 36-136(F)
Implementing statutes: A.R.S. §§ 36-433, 36-433.01, 36-433.02, and 36-434
3. The effective date of the summary rules:
April 21, 1995
4. The name and address of agency personnel with whom persons may communicate regarding the rule:
Name: Arlene Good Thunder
Address: Department of Health Services
Assurance and Licensure Services
1647 East Morten, Suite 230
Phoenix, Arizona 85020
Telephone: (602) 255-1132
Fax: (602) 255-1109
5. An explanation of the rule, including the agency's reasons for initiating the rule:
The Department is repealing these rules because the statutory authority for the certificate of need process was repealed on March 16, 1985; therefore, the rules are obsolete.

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6. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
7. The preliminary summary of the economic, small business, and consumer impact:
Pursuant to A.R.S. § 41-1055(D)(2), the agency is exempt from preparing the economic, small business, and consumer impact summary statement.
8. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:
Not applicable.
9. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule:
None scheduled.
10. An explanation of why summary proceedings are justified:
Since this action is only to repeal obsolete rules no proceedings are scheduled.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules
None.
12. Incorporations by reference and their location in the rules:
None.
13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 9. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: ESTABLISHMENT; MODIFICATION**

**ARTICLE 2. APPLICATION FOR CERTIFICATE OF
NEED**

R9-9-225.	Statement of authority
R9-9-226.	Definitions
R9-9-227.	General
R9-9-228.	Construction letter of intent
R9-9-229.	Notices of intent
R9-9-230.	Contents of application
R9-9-231.	Commencement of review
R9-9-232.	Conduct of public hearing
R9-9-233.	Governing body review of the findings
R9-9-234.	Comparative review by the agency
R9-9-235.	Review of findings by the director
R9-9-236.	Appeal procedure
R9-9-237.	Rehearing or review of decision
R9-9-238.	Comparative review by the director
R9-9-239.	Expiration and withdrawal of certificate of need
R9-9-240.	Temporary certificate of need
R9-9-241.	Periodic reports
R9-9-242.	State Health Planning Advisory Council
R9-9-243.	State Health Planning Advisory Council comparative review procedures

**ARTICLE 2. APPLICATION FOR CERTIFICATE OF
NEED**

R9-9-225. Statement of authority
The Arizona Department of Health Services is authorized pursuant to A.R.S. §§ 36-433, 36-433.01, 36-433.02, and 36-434 to adopt rules and regulations governing the issuance of certificates of need.

R9-9-226. Definitions
Words defined in A.R.S. § 36-401 have the same meaning when used in this Chapter. Words not defined in A.R.S. § 36-401 have the following meanings when used in this Chapter, unless the context otherwise requires:

1. "Affected person" means any person residing within the geographic area served or to be served by the applicant; any agency serving a contiguous health service area; any provider in the same health service area which provides

services similar to the services proposed or provided by the applicant; any provider in a different health service area if the proposal under review would adversely affect the provider; and providers which have on file with the agency and Department a currently effective letter of intent to provide a facility or service similar to the project being reviewed.

2. "Agency" means the authorized local agency recognized by the Department pursuant to A.R.S. § 36-401 or, where no such recognized authorized local agency exists, the state Health Planning Advisory Council. If the applicant is a state-owned or operated health care institution, "agency" means the state Health Planning Advisory Council.
3. "Annual operating costs" means the aggregate annual expenses, calculated on the basis of generally accepted accounting principles, for the operation of a health care institution or specific service during a twelve-month period.
4. "Emergency need" means a condition which presents an immediate threat to public health, safety, or welfare of the patients who would be served and makes it impracticable, unnecessary, or contrary to the public interest to conduct the regular certificate of need application review process. For purposes of this definition, "a condition which presents an immediate threat" means a condition which could contribute to death, cause serious disease, or cause or contribute to debilitating injury.
5. "Health care services organization" means any person who has a certificate of authority from the Director of the Department of Insurance to operate a health care services organization pursuant to A.R.S. § 20-1054.
6. "Increased expenditures" means an aggregate increased financial outlay of combined operating costs, capital expenditures, and all debt service.
7. "Interested person" means any person who testified or presented evidence at the public hearing.
8. "Modification" means the substantial improvement, enlargement, reduction, moving or alteration of, addition to, or other change in a health care institution or its

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facilities or in the services provided by such an institution.

9. "Person" means any individual, corporation, partnership, association, the state, or any other governmental unit or agency.
10. "Predevelopment expenses" means those expenses incurred or to be incurred by a person prior to offering or developing any medical or health related service or facility for which a certificate of need is required pursuant to A.R.S. § 36-433(A). Predevelopment expenses include surgery costs, architect fees, consultant fees, legal fees, and any cost directly related to preparation of the application or the project.
11. "Record" means:
 - a. The application, including all modifications, amendments, or supplementations to the application filed with the agency and the Department at least 24 hours before commencement of the public hearing. The agency may establish a deadline, which shall be no less than seven days after the initial date of filing the application, within which all modifications, amendments, or supplementations to the application shall be filed. The agency shall notify the Department of such deadline.
 - b. All staff memoranda, including an analysis of the application, and data used by the agency in connection with its evaluation of the application.
 - c. All correspondence or memoranda submitted by the applicant and other affected persons.
 - d. The applicant's response to staff analysis and all written testimony, including charts and graphs, filed with the agency by the applicant and other affected persons. The agency may establish a deadline for submittal of the documents included in this paragraph so that the material can be provided to the hearing body and the applicant at least 24 hours prior to the public hearing.
 - e. A transcript or recording of the public hearing.
 - f. A statement of matters officially noticed.
 - g. For purposes of review of the findings by the agency governing body and the Director, the record also includes all findings and recommendations issued by any body of the agency, and a transcript or recording of all earlier oral proceedings before any body of the agency.
12. "Written testimony" means all information, exclusive of oral testimony, relating to the merits of an application offered by any person for consideration by the hearing body.

R9-9-227. General

- A. For purposes of A.R.S. § 36-433(A)(4), which requires a certificate of need for changes in the use of one or more existing beds if such changes will result in increased expenditures of more than \$150,000 within 12 months of the change:
 1. A health care institution shall obtain a certificate of need before changing the use of one of more existing beds from one license classification stated in R9-10-114 to another license classification. A certificate of need is not required by A.R.S. 36-433(A)(4) to change from one subclass to another subclass within the same license classification.
 2. A permit issued pursuant to R9-9-316 is required for change in the use of one or more existing beds.

B. For purposes of A.R.S. § 36-433(A)(8), "substantial change" means "modification".

C. For purposes of A.R.S. § 36-433(A)(1), a single capital expenditure shall include all predevelopment expenses and development, construction, and modification activities and expenses which are related and which are directed toward a common goal, purpose, or service. Projects which are to be accomplished sequentially or simultaneously in the same or contiguous areas shall not be divided into segments for the purpose of determining whether a certificate of need is required.

R9-9-228. Construction letter of intent

Any person planning a construction project for a health care institution shall file with the agency and the Department a letter of intent describing the scope, nature, and estimated cost or other financial impact of the project at least 60 days prior to the planned date for applying for a certificate of need. A letter of intent shall be effective for 90 days from the date of filing and shall be void thereafter.

R9-9-229. Notices of intent

A. A person planning the establishment of a new medical service not listed in A.R.S. § 36-433(A)(5) shall file with the Department and the agency a notice of intent describing the proposed new medical service and shall provide on forms supplied by the Department a detailed estimate of the annual operating costs for the first twelve months of operation of the service. The Department may request and the applicant shall provide additional information which the Department deems necessary to evaluate the estimated annual operating costs.

1. Within 30 days of the receipt of the notice of intent, the Department will conduct a public hearing to determine whether the annual operating costs of the proposed new medical service will exceed \$75,000.
2. The provisions of A.C.R.R. Title 9, Ch. 1, Article 1, rules of practice and procedure before the Department, shall govern the public hearing conducted by the Department.
3. The Director will issue a written decision within 15 days after the conclusions of the public hearing.
4. A person otherwise subject to A.R.S. § 36-433(A)(6) who expressly acknowledges that the annual operating costs of the proposed new medical service will exceed \$75,000 may waive notice and his or her right to a public hearing under this Section by submitting an application for a certificate of need.

B. A health care services organization planning a project which is exempt from certificate of need review pursuant to A.R.S. § 36-433(F) shall file with the agency and the Department a notice of intent describing the scope, nature, and estimated costs or other financial impact of the project at least 30 days prior to the planned date of implementing the project.

C. A person planning the acquisition of a health care institution shall file with the Department and the agency a notice of acquisition describing the proposed acquisition, and specifying any anticipated differences between the existing bed capacity and the services of the institution and those proposed to be offered after the acquisition. The letter shall be filed at least 30 days prior to the date the person acquires or enters into a contract to acquire the health care institution.

R9-9-230. Contents of the application

A. The applicant for a certificate of need shall complete forms developed by the Department and supplied by the Department or the agency and concurrently file copies of the application with the Department and agency. The number of

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copies to be filed shall be determined by the Department and the agency.

B. The following information shall be included in an application:

1. The description of the project and the geographical areas to be served, and the nature, purpose, and cost of the project, including the method of proposed construction in the case of facilities. In addition, the following information shall be included:
 - a. Estimated annual operating costs of the project for each of the first three years of operation.
 - b. Estimated annual operating income of the project for each of the first three years of operation.
 - c. Projected utilization of the project for the first three years.
 - d. Anticipated rates and charges for the project for the first three years of operation.
2. The health problem or needs that the population served or to be served by the proposed service has for the service. In addition, in the case of a reduction of a medical or health related service or the relocation of a medical facility, the need that the population presently served has for the service and the extent to which that need will be met after the proposed reduction or relocation.
3. The ability of the applicant to comply with all applicable professional and institutional standards. In addition, where applicable, any relevant information relating to the quality of service rendered by the applicant in the past.
4. The relationship of services reviewed to the long range plan, if any, of the applicant.
5. The availability of less costly or more effective alternative methods of providing the services.
6. The relationship of services reviewed to the existing health care system of the area in which the services are provided or proposed to be provided.
7. The efficiency and appropriateness of the use of existing services or facilities that are similar to those proposed.
8. The qualifications and ability of the applicant to provide and obtain proper financing, staffing, equipment, management, and operation of the proposed services or facilities.
9. In the case of health services proposed to be provided:
 - a. The effect of the proposed services on the clinical needs of health professional training programs.
 - b. The extent to which the proposed services will be accessible to:
 - i. Health professional training program participants, and
 - ii. The persons who reside in the area to be served by the proposed services.
10. The special needs and circumstances of health care services organizations or applicants which provide a substantial portion of their services to individuals not residing in the health service areas in which the applicants are located.
11. The effect of competition on the financing, provision, and supply of the health services being reviewed.
12. The impact of proposed construction projects on the applicant's cost of providing health services and on the costs and charges for health services provided by other persons.
13. The relationship of the services or facilities reviewed to the health plans adopted by the authorized local agency

and the State Health Plan. If the application is in conflict with either plan, the applicant shall prove by a preponderance of the evidence that a need exists for the project.

14. A statement that the applicant has reviewed, or attempted to review, the proposed project with other health care institutions which provide services to the residents in the area to be served for the purpose of exploring the feasibility of coordinating with such institution's programs, services, or facilities. In cases where the coordination among institutions is planned, a statement concerning the implementation of such coordination shall be included. If there is no other health care institution providing services to residents of the service area, the applicant shall so state.
 15. A timetable for making the proposed service or equipment available or obligating the proposed expenditure. The timetable shall address the following points, where applicable:
 - a. The time the applicant requires to obtain financing for the project.
 - b. The time the applicant requires to obtain architectural drawings of the project.
 - c. The time the applicant requires to obtain a permit for the project.
 - d. The time the applicant requires to acquire the site.
 - e. In the case of an acquisition of equipment, the time required for delivery and installation of the equipment.
 - f. The date the applicant expects to begin construction.
 - g. The date the applicant expects the project to be completed.
 - h. The closing date of the applicant's fiscal year.
- C. An abbreviated application shall contain the information required in paragraphs (1), (2), (3), (4), (5), (7), (8), (13), and (15) of subsection (B) of this Section. The following projects shall, and others may, require the use of an abbreviated certificate of need application.
1. Acceptance of a donation if such acceptance will cause increased expenditures, apart from the donation, for any item for which a certificate of need is required pursuant to A.R.S. § 36-433(A).
 2. Changes in bed capacity of more than ten beds or ten percent of the total bed capacity, whichever is less, over a two year period, if such changes will not require a capital expenditure greater than \$150,000.
 3. Changes in the use of one or more existing beds if such changes will result in increased expenditures of more than \$150,000 within 12 months of the change.
 4. A substantial change in an existing medical service which will result in a new or increased annual operating cost of \$75,000 or more.
 5. A replacement of equipment which will entail a capital expenditure over \$150,000.

R9-9-231. Commencement of review

- A. The agency shall serve notice of the public hearing on the applicant and the Department and shall notify all affected persons at least 15 days prior to the hearing date. The notice shall include a statement of the date, time, place, and nature of the hearing.
- B. Notice to the applicant and the Department shall also include a list of the names of the panel members from which a body will be selected, with instructions that the applicant shall disqualify the appropriate number of panel members pur-

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suant to A.R.S. § 36-433.01(A)(3). The applicant shall notify the agency in writing of the names of the panel members disqualified no later than ten days prior to the hearing date.

C. After the agency issues the notice of the public hearing as specified in subsection (B) above, and before the issuance of a final decision by the Director, there shall be no off-the-record conversations or other communication pertaining to the merits of the application between any persons in the following two categories:

1. Any person acting:
 - a. On behalf of the applicant, or
 - b. In support of the applicant, or
 - c. Opposed to the application, or
 - d. In favor of withdrawal of a certificate of need, and
2. Any member of the governing body, hearing panel, or hearing body.

D. After the commencement of the public hearing and before the issuance of a final decision by the Director, there shall be off-the-record conversations or other communication pertaining to the merits of the application between any persons in the following two categories:

1. Any person in paragraph (1) of subsection (C) of this Section; and
2. Any person acting on behalf of or employed by the agency or the Department who exercises any responsibility respecting the application or withdrawal of the application.

E. The applicant and the agency may extend the review period specified in A.R.S. § 36-433.01(A) by a written agreement which shall:

1. State the reasons for the extension;
2. Be signed by the applicant and agency;
3. Specify the number of days by which the review period shall be extended; and
4. Be filed with the Department and the agency.

R9-9-232. Conduct of public hearing

A. The hearing body shall conduct the public hearing required by A.R.S. § 36-433.01(A)(2). There shall be one public hearing although such hearing may continue for more than one session. The hearing shall be conducted in accordance with the following procedures:

1. The hearing chairman may, or at the request of the applicant shall, call a conference at the opening of the hearing or at any other reasonable time for the purpose of clarifying the procedural steps to be followed in the proceeding. The conference shall be on the record and shall not deal with substantive matters relating to the merits of the application.
2. The same chairman and hearing body shall preside over all sessions of the public hearing on an application.
3. The chairman shall regulate the course of the hearing in an impartial manner and shall rule upon procedural matters. Any affected person shall be given an opportunity to present oral or written testimony, filed in accordance with R9-9-226(A)(11), supporting his position. Members of the hearing body may question all witnesses and employees of the agency. At the request of the agency the applicant may, not later than 24 hours before the public hearing, file material in addition to the original application.
4. All witnesses at a hearing shall testify under oath or affirmation. The applicant shall have the right to present such oral or written testimony or arguments, filed in accordance with R9-9-226(A)(11), and conduct such cross-examination as may be required for a full and true

disclosure of the facts. The chairman shall allow relevant, probative, and material evidence, including testimony from affected persons and exclude all irrelevant, immaterial, or unduly repetitious evidence.

B. At the public hearing the hearing body shall adopt findings which sequentially cover those factors required in R9-9-230(B) or (C), as applicable. A further finding shall be made whether to recommend to the governing body issuance or denial of a certificate of need for the proposed project. Hearing body members who have not been present for all sessions of the public hearing shall not vote on the findings or recommendation.

C. Within 15 days after the close of the public hearing and at least ten days before the date set for review by the governing body, the hearing body shall:

1. File the findings with the governing body and the Department.
2. Deliver or send a copy of the findings to the applicant by certified mail return receipt requested;
3. Deliver or send a copy of the findings or a notice of issuance of findings to all affected persons;
4. Include with the findings the names and addresses of all interested persons.
5. Deliver or send a statement to all interested persons that any person desiring to receive notice of the findings issued by the governing body of the local agency, notices of appeal, findings, and decision by the Director shall file a demand for notice with the local agency before the governing body issues the findings. The demand for notice shall state the interested person's name and mailing address.

R9-9-233. Governing body review of the findings

A. The governing body shall review the findings of the hearing body. The governing body review shall conform with the following procedures:

1. At least ten days before the date set for review by the governing body, it shall send notice identifying the application and findings of the hearing body in question, specifying the date, time, and place of the review. The notice shall be delivered or sent by certified mail to the applicant, the Director, and all interested persons.
2. The governing body shall not accept or solicit any new or additional evidence. No written, graphic, pictorial, or other documentary evidence shall be offered or made available to the governing body other than a copy of such material which is in the record. Oral presentations offered to the governing body should be limited to excerpts of the record. If an oral summary or other non-verbatim statement is made to the governing body not also contained in the record, the findings may be subject to modification or substitution by the Director.
3. The applicant and any interested person:
 - a. May submit written argument in support of his or her position to the governing body. The agency may establish a deadline, which shall be no less than 24 hours before the commencement of the review by the governing body, within which all written argument shall be filed with the agency; and
 - b. Shall be given a reasonable opportunity to present oral argument in support of his position at the review by the governing body.
4. All written and oral argument presented to the governing body shall be limited to a consideration of the facts and circumstances arising out of the public hearing with

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respect to the review criteria stated in paragraph (5), subparagraph (b) of this Section.

5. At the completion of the review, the governing body shall:

- a. Adopt the findings of the hearing body, or
- b. Modify the findings, issue entirely separate findings, or refer the application back to the hearing body if the governing body decides that:
 - i. The findings were against the weight of the evidence, or
 - ii. The findings were arbitrary or capricious, or
 - iii. The findings were incorrect as a matter of law, or
 - iv. The applicant did not receive a fair hearing.

6. If the governing body refers an application back to the hearing body for further review, the governing body shall issue instructions and questions which shall limit the scope of review by the hearing body.

- B. Not later than 45 days after the close of the public hearing, the agency shall issue the written findings of the governing body and shall:

1. File the findings, all demands for notice filed by interested persons, and all other portions of the record with the Department;
2. Certify by signed written statement of a responsible agency employee the date of issuance of the findings.
3. Satisfy the requirements of R9-9-232(C)(2) through (4).

R9-9-234. Comparative review by the agency

The agency may review certificate of need applications for similar facilities, services, or equipment in relation to each other in accordance with the following procedures:

1. The agency shall obtain the written concurrence for comparative review from all involved applicants.
2. The public hearing shall be conducted in accordance with the provisions of R9-9-231 and R9-9-232 except that one hearing body shall be appointed to conduct one public hearing on all certificate of need applications to be reviewed in relation to each other.
3. The governing body shall review in relation to each other all applications which were reviewed in one public hearing. The governing body review shall be conducted in accordance with the provisions of R9-9-233 except that:
 - a. The notification of review shall identify all applications, parties, and findings to be reviewed in relation to each other by the governing body.
 - b. The applicant and interested persons:
 - i. May submit written argument in support of or in opposition to any application subject to comparative review.
 - ii. Shall be given a reasonable opportunity to present oral argument in support of or in opposition to any application subject to comparative review.

R9-9-235. Review of the findings by the director

- A. The Director will review the record of all applications and will:

1. Adopt the findings of the agency; or
2. Modify the findings, issue entirely separate findings, or refer the application back to the agency for further review if the Director decides that the agency findings were:
 - a. Against the weight of the evidence; or
 - b. Arbitrary or capricious; or
 - c. Incorrect as a matter of law; or

- d. The applicant did not receive a fair hearing.

- B. A copy of the Director's findings and decision will be mailed to the applicant, the agency, and all interested persons who appealed or addressed arguments to the Director.

R9-9-236. Appeal procedure

- A. The applicant or any interested person may appeal the findings and recommendation of the agency to the Director.

- B. Any party may file with the Director written objections to the accuracy and completeness of the record of the public hearing. Objections to the record shall be filed within ten days of issuance of the written findings by the agency.

1. In the absence of objections, the accuracy and completeness of the record of the public hearing will be conclusively presumed.

2. The person filing a notice of appeal, the agency, all interested persons, and the applicant collectively shall be referred to as "parties".

- C. An appeal shall be commenced by filing a written notice of appeal with the agency and the Director within ten days of issuance of the written findings by the agency. The notice of appeal shall:

1. Identify the application in question;
2. State the name of the party filing the appeal;
3. Designate the findings in dispute.

- D. The Director will mail or deliver to all interested persons who filed a demand for notice with the local agency a copy of all objections to the record and notices of appeal. The Director will mail or deliver to all persons who file objections to the record or notices of appeal the names and addresses of all persons who have filed a demand for notice.

- E. Any party may submit written argument to the Director in support of his position or in response to the written argument of any other party. The Director will consider only those matters contained in the record. The Director will not consider new or additional facts. Submission of written argument shall conform with the following:

1. The party who originates the memorandum shall file with the Director and shall simultaneously send one copy to persons who filed a demand for notice.
2. The parties shall adhere to the following time schedule for submission of written memoranda:

- a. The person initiating the appeal shall file an opening memorandum no later than 15 days after the date of filing of the notice of appeal.

- b. The response memorandum of any other party shall be filed no later than 15 days from receipt of all opening memoranda.

- c. The person who initiated the appeal may submit a reply memorandum which shall be filed no later than five days following receipt of all response memoranda. The contents of a reply memorandum shall be limited solely to the arguments and positions raised by response memoranda.

- F. Any party may file a written request for oral argument before the Director. The person who initiated the appeal shall request oral argument not later than 15 days after receipt of the opening memorandum. The Director shall give written notice to all persons who filed a demand for notice at least ten days prior to the date set for oral argument.

- G. In computing any period of time prescribed or allowed by this Section, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal

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holiday, Intermediate Saturdays, Sundays, and holidays shall be included in the computation. Whenever a party must act in response to receipt of a notice or memorandum which is received by mail, five days shall be added to the period. The time prescribed by A.R.S. § 36-43.02 when the Director shall grant or deny a certificate of need may be extended by written agreement between the applicant and the Director.

R9-9-237. Rehearing or review of decision

Any rehearing or review of the Director's decision shall be conducted in accordance with R9-1-125.

R9-9-238. Comparative review by the director

A. The Director will review in relation to the each other all certificate of need applications and records pertaining to similar types of services, facilities, or equipment which the agency reviewed in relation to each other.

B. Agency findings on applications for similar types of services, facilities, or equipment will be reviewed in accordance with R9-9-235 and R9-9-236, except that:

1. The notice of appeal also shall identify all applications, parties, and findings subject to comparative review.
2. An applicant or interested person may file one opening memorandum in support of or in opposition to the findings and recommendation of the agency with regard to any application and attendant record which is subject to comparative review.
3. Thereafter, an applicant or interested person may file one response memorandum which shall be limited to an evaluation of the argument and positions raised in opening memoranda filed by other parties. The agency may file one memorandum in response to each opening memorandum filed by an applicant or interested person.
4. Thereafter, one reply memorandum may be filed by an applicant or interested person to whose opening memorandum a response was filed by one or more other parties or by the authorized local agency. The contents of the reply memorandum shall be limited solely to the argument and positions raised by the opposing response memoranda.
5. An applicant who previously filed an opening memorandum limited only to a discussion of the findings and recommendation of the agency received by that applicant may file a supplemental memorandum containing its argument and positions with regard to the findings and recommendations received by other applicants subject to comparative review. The memorandum shall be filed at least five days before the date set for oral argument or, if there is no oral argument, within five days of receipt of all reply memoranda.

R9-9-239. Expiration and withdrawal of certificate of need

A. A certificate of need shall be valid only for the period of time stated in the application, unless the certificate of need is withdrawn pursuant to subsection (B) below. The Director may extend the time for which a certificate of need is valid upon showing by the applicant that a longer period is necessary due to circumstances beyond its control.

B. If the Director determines that the applicant is not making a good faith effort to meet the timetable defined in the application, the Director may withdraw the certificate.

1. The Department will issue a report detailing the lack of good faith effort on the part of the applicant.
2. The applicant shall supply to the Department any information which the Department may request regarding the applicant's attempt to meet the timetable. The applicant may also submit to the Department such

additional information as the applicant deems necessary to establish a good faith effort.

3. The Department's report, and any additional information supplied by the applicant to support the applicant's position, will be submitted to the agency by the Department.

4. The agency will review only the information received from the Department and recommend to the Director whether the certificate should be withdrawn. The recommendation shall be filed with the Director within 45 days of the date the Department submits the information to the agency.

5. The Department will consider the report, the applicant's position, and the agency's recommendation and issue his decision within 30 days of the date he receives the agency's recommendation.

C. A certificate holder may, within ten days of receipt of the Director's decision, file with the Director a request for a hearing to contest the decision. The provisions of A.R.S. Title 41, Ch. 6, Article 1 shall apply.

R9-9-240. Temporary certificate of need

A. The Director will issue a temporary certificate of need for the acquisition of equipment if it is determined that an emergency need exists.

B. Review of an application for a temporary certificate of need shall be as follows:

1. An application for a temporary certificate of need shall be filed concurrently with the agency and the Department. The application shall contain information pertaining to:

- a. The description, nature, purpose, and cost of the equipment.
- b. The health problems or needs that the population to be served has for the proposed equipment, and a description of the condition which the applicant believes presents an immediate threat.
- c. The availability of alternative methods of delivering the service which the equipment will provide.
- d. The qualifications and ability of the applicant to provide and obtain proper financing, staffing, and operation of the proposed equipment.
- e. The time the applicant requires to make such equipment available.

2. The application shall be reviewed by a panel comprised of members of the agency governing body. All deliberations of the review panel shall be recorded. All meetings shall be open.

- a. The review panel shall conduct a public hearing if requested by the applicant.
- b. The recommendation of the review panel shall be transmitted to the Department no later than three working days from the date the application was filed. The recommendation may be transmitted orally, but must be followed in writing.

3. The Director will issue a decision no later than five working days from the date the application was filed. The review criteria in R9-9-235 shall apply to the Director's review.

C. A party aggrieved by the Director's decision may, except as stated below, appeal the decision in accordance with R9-9-236:

1. The notice of appeal and opening memorandum from the applicant shall be filed within five days of receipt of the Director's decision;

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2. The response memorandum shall be filed no later than five days from receipt of the opening memorandum.
3. There shall be no reply memorandum.
4. The Director will give notice of oral argument at least three days prior to the date set for oral argument.

R9-9-241. Periodic reports

Within 30 days after the close of an applicant's fiscal year, the applicant shall submit to the Director and the agency a report summarizing the progress or completion during the previous fiscal year of approved projects. Within 30 days of the completion of approved services or facilities, a final report shall be submitted to the Director which includes a list of the cost of construction and fixed equipment, movable equipment, site survey and soil investigation, architect and consultant fees, supervision and inspection at site, legal fees, financing fees, and all other direct and indirect costs applied to the project.

R9-9-242. State Health Planning Advisory Council

- A. The State Health Planning Advisory Council (the Council) shall, except as stated in this Section, perform certificate of need application review functions in accordance with A.R.S. § 36-401(B) and regulations applicable generally to agencies.
- B. The Council shall delegate to the hearing body the authority to hold public hearings and to make the findings and recommendation required by A.R.S. § 36-433.01(B) and regulations. The Council shall review the hearing body findings and recommendation in accordance with the provisions of R9-9-233.
- C. The Council chairman or his designee shall select hearing panel members for certificate of need review hearings as follows:
 1. A pool of persons shall be established consisting of volunteers from the applicable health service area and Council members. Each person shall attend a certificate of need orientation session presented by the Department in order to be eligible for certification by the Council to sit as a member of a hearing panel.
 2. The Council chairman or his designee shall select from the pool the number of persons necessary to comprise a hearing panel.
 3. The Council chairman or his designee shall select a hearing body chairman, and a vice chairman who shall assume the duties of the chairman if he is unable to serve for any reason at any time during the review proceedings.
 4. The number of persons who comprise a hearing panel shall be nine, with the applicant to strike two.
- D. The public hearing shall be held if at least three voting hearing body members are present. If, after the commencement of the hearing, a hearing body member is absent during part of the hearing, no alternative shall be appointed. The review hearing shall proceed to conclusion without the absent member if at least three voting members remain.
- E. As required by A.R.S. § 36-433(C)(13), the Council shall review applications for certificates of need filed with it as the authorized local agency for Health Service Area I comprising Maricopa, Pinal, and Gila Counties, in relation to the

following applicable health plans prepared by the Central Arizona Health Systems Agency:

1. 1978-1984 Hospital Bed Plan effective February 1, 1979.
2. 1979 Health Service Plan and 1980 Supplement, Table 4.46.6, Determination of Needed (Surplus) Skilled and Intermediate Nursing Home Beds; HSA 1, 1984, page iv C-65.35.
3. Ambulatory Surgery Criteria and Standards and Methodology for Projecting Need for Ambulatory Surge in HSA 1, 1980, Step 6, Determination of Surplus or Deficit Ambulatory Surgical Capacity, found in the appendix on page A-3.
4. Computed Tomography Scanner Criteria and Standards and Methodology for Projecting Need for CT Scanners in HSA 1.

F. The plans listed in subsection (E) above are available for inspection at the Department, Division of Health Resources.

R9-9-243. State Health Planning Advisory Council comparative review procedures

The Council may review certificate of need applications for similar facilities, services, or equipment in relation to each other in accordance with the provisions of R9-9-234 except that:

1. The number of persons selected for membership on the hearing panel and hearing body shall conform with the following:

Number of Applicants	Number of Hearing Panel Members	Number of Hearing Body Members
2	7	5
3	12	9
4	17	13
5 or more	19	Not greater than 15
2. A public meeting for the purpose of providing the applicants an opportunity to exercise their required panel disqualification pursuant to A.R.S. § 36-433.01(A)(5) shall be held not less than ten days before the date set for the hearing on the applications. The Council chairman or his designee shall conduct the public meeting.
3. Each applicant shall disqualify one hearing panel member. The chairman shall not permit an applicant to disqualify a hearing panel member who previously had been disqualified by another applicant.
4. Failure of an applicant to attend the public meeting to select the hearing body or failure of an applicant to exercise his right at the public meeting to disqualify the appropriate number of hearing panel members shall constitute a waiver of the applicant's right to disqualify a hearing panel member. As a result, the Council chairman or his designee at the public meeting shall disqualify the appropriate number of hearing panel members to obtain the required number of hearing body members.